

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Accessibility Emergency Information, and)	MB Docket No. 12-107
Apparatus Requirements for Emergency)	
Information and Video Description:)	
Implementation of the Twenty-First Century)	
Communications and Video Accessibility Act)	
of 2010)	
)	
Video Description: Implementation of the)	MB Docket No. 11-43
Twenty-First Century Communications and)	
Video Accessibility Act of 2010)	

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President and General Counsel

Scott Bergmann
Vice President, Regulatory Affairs

Krista Witanowski
Assistant Vice President, Regulatory Affairs

Matthew B. Gerst
Director, State Regulatory and External
Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

July 23, 2013

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accessibility Emergency Information, and)	MB Docket No. 12-107
Apparatus Requirements for Emergency)	
Information and Video Description:)	
Implementation of the Twenty-First Century)	
Communications and Video Accessibility Act)	
of 2010)	
)	
Video Description: Implementation of the)	MB Docket No. 11-43
Twenty-First Century Communications and)	
Video Accessibility Act of 2010)	

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association® (“CTIA”)^{1/} hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.^{2/} The wireless industry appreciates the opportunity to comment in this proceeding and applauds the Commission’s efforts to ensure that emergency information and video description is available and accessible to all consumers, including those who are blind or visually impaired. As explained in these comments, CTIA asks the Commission to confirm that mobile device manufacturers and wireless service providers are not subject to the Twenty-First Century

^{1/} CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

^{2/} *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order (“Order”) and Further Notice of Proposed Rulemaking (“FNPRM”), 28 FCC Rcd 4871 (2013).

Communications and Video Accessibility Act of 2010 (“CVAA”) obligations that the Federal Communications Commission chooses to place on MVPD applications.

INTRODUCTION AND SUMMARY

CTIA and its members support the FCC’s efforts to make emergency information and video description in MVPDs’ linear video programming channels accessible to individuals who are blind or visually impaired when they are using mobile devices. However, such programming is made available over MVPD applications (“apps”). CTIA takes no position on whether or not MVPD apps are subject to the requirement to make emergency information and video description accessible on a secondary audio channel. However, if the Commission determines that MVPD apps are subject to the rules, CTIA notes that mobile device manufacturers have no control over the audio functionality of an MVPD application. For this reason, the Commission should clarify that mobile device manufacturers cannot be subject to the CVAA obligations that the FCC chooses to place on MVPD applications.

Similarly, wireless service providers cannot be responsible for the compliance of secondary audio channel functionality in MVPD programming watched on mobile devices using MVPD apps. In such situations, the wireless service provider is providing only the data conduit over which the MVPD subscriber accesses the app or MVPD website. As a pure conduit of information, the Commission should also clarify that the CVAA limits wireless service provider’s responsibility for MVPD applications.

While CTIA understands that the Commission’s focus in this proceeding is on MVPD programming, CTIA and its member companies remind the Commission that many wireless service providers voluntarily provide wireless subscribers important emergency information beyond that which is available through MVPD programming. Wireless providers representing more than 97% of subscribers participate in the Wireless Emergency Alert program, ensuring

that free national and location-specific emergency information is delivered directly to subscribers, including blind or low vision subscribers, in a timely manner.

I. THE COMMISSION SHOULD CONFIRM THAT MOBILE DEVICE MANUFACTURERS CANNOT ENSURE THAT MVPD APPLICATIONS PROVIDE EMERGENCY INFORMATION AND VIDEO DESCRIPTION CAPABILITIES THROUGH A SECONDARY AUDIO CHANNEL ON MOBILE DEVICES.

Although the *FNPRM* inquires briefly into the role of mobile device manufacturers in ensuring that emergency information and video description are available on MVPDs' video programming's secondary audio stream when viewed on a mobile device,^{3/} the crux of this proceeding properly focuses on the obligations of MVPDs that provide video programming services accessible on mobile devices via mobile applications ("apps").^{4/} The core issues raised in the *FNPRM* relate exclusively to content and technologies that are controlled by MVPDs.

CTIA takes no position on the Commission's inquiry into whether the recently adopted emergency information rules apply to an MVPD when it permits subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices.^{5/} To the extent that the rules do apply to MVPD mobile apps, however, the Commission must recognize and make clear that mobile device manufacturers are not subject to the CVAA obligations the FCC chooses to place on MVPD applications in ensuring that such apps comply with any requirement to make emergency information and video description accessible on a secondary audio channel.

^{3/} *FNPRM* ¶ 80.

^{4/} An MVPD subscriber might also use a mobile device's Internet connection to visit an MVPD website, but the Commission already has determined that in such instances, the apparatus rules are not triggered. *Order* n.249 ("We clarify that at this time, the apparatus requirements adopted herein are not triggered by an apparatus receiving, playing back, or recording video programming available for viewing on an Internet website, even if such programming is provided by a covered entity.").

^{5/} *Id.*

In adopting the emergency information and video description rules, the Commission determined that a mobile device is not an apparatus subject to the rules unless it includes a receiver used to access television broadcast or MVPD services.^{6/} This limitation was designed to reflect the Commission’s conclusion that only apparatus designed to receive, play back or record television broadcast or MVPD services – the services that are subject to the video description and emergency information requirements – should be subject to the apparatus rules.^{7/} The Commission also concluded that software, which includes apps,^{8/} is covered by the definition of “apparatus” only to the extent that it is integrated into a mobile device by the manufacturer.^{9/} These logical determinations stem from the common sense notion that responsibility for ensuring compliance with the Commission’s rules properly lies with the entities that control the technology in question, a principle that the Commission has applied consistently throughout its CVAA implementation proceedings.^{10/}

^{6/} *Order* ¶ 60 n. 249, ¶ 74 (limiting apparatus requirements to mobile DTV apparatus).

^{7/} *Id.*

^{8/} *See ACS Order, Advanced Communications Services to Those with Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 14590, ¶ 67 & n.145 (2011) (concluding that an “application” is “software, which may be embedded into the device and non-removable, installed by the system integrator or user, or reside in the cloud,” which “is used to implement the actual advanced communications functionality.”); *see also* 47 C.F.R. § 14.10(d) (“The term application shall mean software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing.”).

^{9/} *Id.* at ¶ 62.

^{10/} *See, e.g., Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order*, 27 FCC Rcd 787, ¶ 19 (2012) (“IP Closed Captioning Order”) (requiring video programming operators to send program files to video programming distributors with all required captions because, among other things, “VPOs are in the best position to assess whether captions are required for a particular program” and “typically possess the necessary legal rights to modify the content and insert closed captions”); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order*, 27 FCC Rcd 787 ¶ 94 (2012) (“We decline to include within the scope of our interpretation of the statutory term “apparatus” third-party software that is downloaded or otherwise added to the device independently by the consumer after sale and that is not required by the manufacturer to enable the device to play video... we ... do not believe that it is necessary to hold manufacturers responsible for such “third-party

There is no reason to deviate from these sensible conclusions in the case of MVPD apps. Mobile device manufacturers typically do not control the development and installation of MVPD apps. An MVPD app that permits subscribers to access linear video programming from a mobile device is developed by the MVPD to operate on certain devices, and then made available to the MVPD's subscribers, who may, on their own initiative, install the appropriate software on their personal mobile device.

Once installed on a mobile device, the MVPD app controls the audio capabilities produced through the mobile device for the user. Whether or not there are multiple audio streams in video programming accessed through the MVPD app, and which audio stream the user hears or utilizes at any given time, are a function of the app, not of the device.^{11/} Indeed, the FCC's rules recognize that software, such as apps, direct the use and operation of devices.^{12/} When MVPD subscribers view MVPD programming on a mobile device over an MVPD app, therefore, the mobile device simply supports the general audio functionality of the device, so that it will play whatever audio stream the app itself provides. Because the device cannot control

software" ... In interpreting the scope of the statute in this manner, we have balanced the needs of consumers with the need to minimize burdens on the industry to ensure that our rules do not impede innovation in the device and software markets."); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order*, 26 FCC Rcd 14557, ¶ 86 (2011), quoting *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, 16 FCC Rcd 6417, at ¶ 90 (1999) ("With respect to the definition of 'manufacturer,' consistent with the Commission's approach in the Section 255 Report and Order and in the Accessibility NPRM, we define 'manufacturer' as 'an entity that makes or produces a product.' . . . this definition puts responsibility on those who have direct control over the products produced").

^{11/} See, e.g., Optimum App on Laptop: Settings, OPTIMUM.COM, http://optimum.custhelp.com/app/answers/detail/a_id/2847/kw/Audio (last visited July 16, 2013) (explaining that users can enable secondary audio programming by changing the app's settings).

^{12/} 47 C.F.R. § 14.10(t) ("The term software shall mean programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or related device and instruct it to perform a given task or function.").

what audio stream a user hears during MVPD programming provided through an MVPD app, the device manufacturer cannot ensure compliance with any associated regulations.

It is important, too, that the Commission consider that mobile device manufacturers cannot guarantee that every feature or function of an MVPD application will be supported on a particular mobile device, or that such features or functions will remain operational when a new version of a device is released or when the application or device's underlying software is modified and re-installed onto the device. Device manufacturers and applications developers operate independently. Applications work differently depending on the particular configuration of the combined device, operating system, service provider and application. Only the entity offering the application can ensure that the application and its features and functions work on any particular device when it holds itself out to consumers as available on that device. It is simply impracticable to constrain device manufacturers in innovating or improving their products by any responsibility for ensuring that any particular applications in the marketplace, or any features of those applications, will function on their new or improved device.

II. THE COMMISSION SHOULD CONFIRM THAT WIRELESS SERVICE PROVIDERS ARE NOT COVERED BY THE REQUIREMENT TO MAKE EMERGENCY INFORMATION AND VIDEO DESCRIPTION ACCESSIBLE.

Wireless service providers similarly are not subject to the CVAA obligations the FCC chooses to place on MVPD applications when covered MVPD entities offer subscribers the ability to access their MVPD service through mobile devices. Section 2 of the CVAA makes clear that no person can be liable for a violation of the CVAA's requirements with respect to video programming, online content, applications, etc. to the extent such person is merely providing the connection to that programming, content or application.^{13/} As the legislative

^{13/} Pub. L. 111-260 § 2, 47 U.S.C. § 153 nt.

history explains, “Section 2 provides liability protections where an entity is acting as a passive conduit of communications made available through the provision of advanced communications services or where an entity is providing an information location tool through which an end user obtains access to services and information.”^{14/}

As explained above, MVPD apps are designed, offered, and controlled by the MVPDs themselves, and downloaded and installed onto mobile devices by the MVPD’s subscribers. When subscribers use a wireless data service to access MVPD services by way of an MVPD app, the wireless service provider merely supports the connectivity by which data is transferred via the app from the MVPD service provider to the app user. Because wireless providers serve as nothing more than passive conduits for the data – they do not control the programming or the audio streams that are transmitted – they cannot be held accountable for ensuring that the video programming provided and controlled by MVPDs complies with the CVAA’s requirements.

Finally, although wireless service providers are not subject to the CVAA obligations the FCC chooses to place on MVPD applications in ensuring that MVPDs’ video programming meets the emergency information and video description requirements, CTIA member companies do take seriously their responsibilities to blind and low vision consumers. To the extent that the Commission fears blind or low vision consumers watching MVPD programming on mobile devices will miss vital emergency information, the Wireless Emergency Alert (WEA) service established by the wireless industry, in cooperation with the FCC and the Federal Emergency Management Agency, provides a free and effective opportunity to notify wireless consumers

^{14/} S. Rep. 111-326, Dec. 22, 2010, at 5; H.R. Rep. 111-563 (July 26, 2010) at 22.

about location-specific imminent threats and other information, such as hurricanes, floods, tornadoes, or a missing child.¹⁵

CTIA's member companies played an integral role in developing the WEA and promoting its adoption by manufacturers and service providers. Currently wireless providers representing more than 97 percent of subscribers are participating in distributing the wireless emergency alerts, and over 150 smartphones and mobile devices coming to market are wireless emergency alerts-capable. When a WEA-capable mobile device receives a WEA alert, it emits a distinct audio tone and vibration cadence to signal the message's arrival. If a user receiving the alert has enabled the text-to-speech function on his or her device, the information will be read aloud, as would any regular text message. Therefore, the Commission can be assured that wireless subscribers, including the blind and low vision, have a ready means of receiving priority emergency information on mobile devices.

¹⁵ See, <http://www.fcc.gov/guides/wireless-emergency-alerts-wea> (last visited July 23, 2013); <http://www.fema.gov/wireless-emergency-alerts> (last visited July 23, 2013); and http://www.ctia.org/consumer_info/safety/index.cfm/AID/12082 (last visited July 23, 2013).

CONCLUSION

CTIA appreciates the importance of ensuring that the benefits of communications technologies are available and accessible to all consumers, including those who are blind or visually impaired. CTIA's member companies take their role in this process very seriously, but also recognize that the responsibilities for ensuring access must lie with those entities that maintain control over the content and technology in question. To the extent the Commission chooses to place the CVAA's emergency information and video description requirements on MVPD mobile applications, the Commission should confirm that mobile device manufacturers and wireless service providers cannot be responsible for ensuring that these applications meet the Commission's requirements.

Respectfully submitted,

/s/ Krista Witanowski

Krista Witanowski
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President and General Counsel

Scott Bergmann
Vice President, Regulatory Affairs

Matthew B. Gerst
Director, State Regulatory and External
Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

July 23, 2013